IN THE HIGH COURT OF BOMBAY AT GOA

APPLICATION FOR APPOINTMENT OF ARBITRATOR NO.12/2001

M/s. Praveen Enterprises, a
Partnership Firm registered
under Indian Partnership Act,
having its registered office
at Curia Building, Station Road,
Margao, Goa represented by its
partners :

a) Shri Prakash Ramnath Volvatkar,
major, resident of Gudi-Paroda,
Quepem, Goa.

b) Kum. Nirmala Ramnath Volvatkar,
major, resident of Gudi-Paroda,
Quepem, Goa. ..... Applicants.

V/s.

Konkan Railway Corporation Ltd.,
through the Deputy Chief Engineer,
with office near Railway Overbridge,
Rawanfond, Navelim, Goa. ..... Respondents.

Mr. Sudesh M.S. Usgaonkar, Advcote for the applicants.

Mr. E. Afonso, Advocate for the respondents.

CORAM : F.I. REBELLO, J.

DATE : JUNE 26, 2003.

ORAL JUDGMENT:

On behalf of the applicants, it is contended that as the respondents have failed to appoint an Arbitrator and as such, an Arbitrator shall be appointed not in terms of the contract. On behalf of the Respondents, it is contended that the contract cannot be by-passed and appointment should be in terms of the contract.

Under Section 11, the delegate of the C.J., cannot bye-pass the terms of the contract. At the highest, on failure to appoint within the time stipulated, the learned C.J. or his delegate assumes jurisdiction to appoint. I am of the considered view that in matter of contracts where the public bodies are involved, as far as possible, even if the public body does not appoint an arbitrator in terms of the contract, the delegate under Section 11 should normally follow the terms of the contract. I, therefore, have no reason to depart from the view taken in earlier orders to the same effect.

2. In the light of that, the following order :

The Chairman and the Managing Director of the respondents is directed to forward to the applicants herein a panel of five names within 8 weeks from today. On the applicants naming the arbitrator within two weeks thereafter, the Managing Director to appoint the Arbitrator on behalf of respondent within 4 weeks thereafter. The two arbitrators thereafter to appoint the third arbitrator in terms of the arbitration agreement.

All issues including limitation, are left open for consideration by the arbitrator.

Application stands disposed of. Certified copy Expedited.

F.I. REBELLO, J.

ssm.